

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B01

PLR-103263-14

Date:

July 15, 2014

### Legend

Parent =

Foreign Corp 1 =

Foreign Corp 2 =

Foreign Corp 3 =

Foreign Corp 4 =

Foreign Corp 5 =

Foreign Corp 6 =

Foreign Corp 7 =

Domestic Sub 1 =

Domestic Sub 2 =

Domestic Sub 3 =

Domestic Sub 4 =

Domestic Sub 5 =

Domestic Sub 6 =

Domestic Sub 7 =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

Country X =

Country Y =

Country Z =

State A =

State B =

Treasurer =

Tax Professional A =

Tax Professional B	=
CPA Firm	=
Tax Software	=
Date A	=
Date B	=
Date C	=
Date D	=
Date E	=
Tax Year	=

Dear :

This letter responds to a letter dated December 30, 2013, submitted by Parent on behalf of the Domestic Subs, requesting an extension of time pursuant to Treas. Reg. § 301.9100-3 to file respective Forms 8848 (*Consent to Extend Time to Assess the Branch Profits Tax under Regulations Sections 1.884-2T(a) and (c)*) for the Tax Year.

The rulings contained in this letter are based upon information and representations submitted by the Parent and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Parent and Domestic Subs are domestic corporations organized in State A. Each Domestic Sub is in the business of owning commercial real estate in State A and leasing such real estate to unrelated third parties. Parent is a holding company that holds all of the issued and outstanding shares of the Domestic Subs. Parent and Domestic Subs are members of an affiliated group of corporations that is headed by the Parent and that files consolidated federal income tax returns (Form 1120, *U.S. Corporation Income Tax Return*). Parent timely filed the consolidated Form 1120 for the Tax Year.

Prior to Date A, the commercial real estate owned and leased by each Domestic Sub were owned and leased by respective Foreign Corps. The Foreign Corps were foreign corporations organized in Country X, a country that has not entered into an income tax treaty with the United States. Each Foreign Corp was owned by the Shareholders. Shareholder 1 is a foreign corporation organized in Country Y and Shareholder 2 is a foreign individual that is a resident of Country Z. Shareholder 3 is a limited liability company of State B and Shareholder 4 is a limited liability company of State A. None of the Foreign Corps is a controlled foreign corporation under section 957.

On Date A, in order to provide more efficient and cost effective operations of the commercial real estate owned by each Foreign Corp and to position the real estate for easier refinancing (since the subsequent owner of the commercial real estate in State A would be a State A corporation rather than a foreign corporation), each Foreign Corp domesticated into respective Domestic Subs (i.e., Foreign Corp 1 domesticating into Domestic Sub 1, Foreign Corp 2 domesticating into Domestic Sub 2, etc.) under the General Corporation Law of State A. Parent represents that the domestication of each Foreign Corp into a Domestic Sub on Date A qualified as a reorganization under section 368(a)(1)(F). Shortly after domestication, the Shareholders contributed their shares in the Domestic Subs to Parent on Date B solely in exchange for shares of Parent under section 351.

Parent represents that all applicable requirements under Treas. Reg. § 1.897-6T(a), Treas. Reg. § 1.897-5T(d)(1)(iii), Treas. Reg. § 1.1445-2(d)(2), Treas. Reg. § 1.1445-5(b)(2), and Notice 2006-46 have been satisfied with respect to the transfer of any United States real property interest pursuant to the domestication of each Foreign Corp into a respective Domestic Sub on Date A and each Shareholder's contribution of his or its respective shares in the Domestic Subs to the Parent in exchange for shares of the Parent on Date B.

The domestication on Date A of each Foreign Corp resulted in a section 381(a) transaction, as defined by Treas. Reg. § 1.884-2T(c).

For all tax years prior to Date A, CPA Firm filed Forms 1120-F (*U.S. Income Tax Return of a Foreign Corporation*) for each Foreign Corp to report the income it derived from its commercial real estate in State A as income effectively connected with the conduct of a trade or business within the United States under section 882(a) (pursuant to the election of section 882(d)) and its branch profits tax liability, if any, under section 884(a). CPA Firm also prepared the Form 1120-F for each Foreign Corp and computed the amount of U.S. net equity and dividend equivalent amount for each Foreign Corp for the tax year ending with the domestication on Date A in accordance with the provisions of Treas. Reg. § 1.884-2T(c)(2)(i).

CPA Firm included in the Form 1120-F filed for each Foreign Corp a statement to the effect that the respective Domestic Sub, as the transferee of U.S. assets in a section

381(a) transaction, would file Form 8848 with the consolidated Form 1120 filed by the Parent for the Tax Year as required by Treas. Reg. § 1.884-2(c)(2)(iii). Tax Professional A, the partner in CPA Firm who oversaw the preparation of the filed Forms 1120-F and the consolidated Form 1120, also advised Treasurer of Parent that each Domestic Sub would have to file a Form 8848 in order for each respective Foreign Corp to determine its U.S. net equity in accordance with the provisions of Treas. Reg. § 1.884-2T(c)(2)(i).

On or about Date C, Tax Professional A reviewed the electronic file copy of the consolidated Form 1120 filed by Parent for the Tax Year and realized the Forms 8848 of each Domestic Sub were not included as part of that filed return. On Date D, Tax Professional A met with Treasurer and notified her of the noncompliance. Treasurer stated during this meeting that she specifically recalled discussing the Forms 8848 and executing those forms as part of the consolidated Form 1120 filed by Parent for the Tax Year.

On Date E, Tax Professional B, an employee of CPA Firm, called the technical support line of the vendor of Tax Software that CPA Firm used for preparing the consolidated Form 1120 filed by Parent for the Tax Year. Based on discussions Tax Professional B had with a customer representative of Tax Software vendor, it became apparent that a technical glitch in the Tax Software prevented the Forms 8848 from being printed and included at the consolidated return level. The customer representative of the Tax Software vendor acknowledged the malfunction and would report the issue as a problem.

The IRS did not discover the Domestic Subs failure to timely file the required statements with the Parent's filed consolidated Form 1120 for the Tax Year before this request for relief was filed.

Parent, on behalf of the Domestic Subs, is now requesting an extension of time pursuant to Treas. Reg. § 301.9100-3 to file respective Forms 8848 for the Tax Year to support the Foreign Corps' respective determinations of U.S. net equity for their tax years ending on Date A in accordance with the provisions of Treas. Reg. § 1.884-2T(c)(2)(i).

Pursuant to Treas. Reg. § 1.884-2T(c)(2)(i), a transferor's U.S. net equity as of the close of the taxable year in which a section 381(a) transaction occurs shall be determined without regard to any transfer in that taxable year of U.S. assets to or from the transferee pursuant to the section 381(a) transaction, and without regard to any U.S. liabilities assumed or acquired by the transferee from the transferor in that taxable year pursuant to the section 381(a) transaction, provided that in the case of a transferee that is a domestic corporation, the transferee files a Form 2045 (Transferee Agreement) and a waiver of period of limitations with its timely filed (including extensions) income tax

return for the taxable year in which the section 381(a) transaction occurs as required by Treas. Reg. § 1.884-2(c)(2)(iii).

The waiver shall be executed on Form 8848, or substitute form, and shall extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs to a date not earlier than the close of the sixth taxable year following the transaction.

Pursuant to Treas. Reg. § 1.884-2T(c)(4)(i), the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits (AECEP) carry over to the transferee under section 381(a) and (c)(2), reduced by the transferor's dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs.

Pursuant to Treas. Reg. § 1.884-2T(c)(4)(iii), in the case of a domestic transferee, distributions out of the transferee's (AECEP) qualify for treaty benefits only if both the actual distributees (the former shareholders of the transferor) would qualify for treaty benefits, and the foreign transferor would have qualified for treaty benefits if the AECEP had been reflected in a dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs. In addition, distributions out of such AECEP retain their character in the hands of any domestic distributee up a chain of corporate shareholders for purposes of applying this rule. See Treas. Reg. § 1.884-2T(c)(4)(iii) for additional information regarding distributions to a foreign distributee out of AECEP and other earnings and profits of the domestic transferee.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, Treas. Reg. § 1.884-2(c)(2)(iii) fixes the time to file Form 8848. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant the Domestic Subs an extension of time, provided that the Domestic Subs (as the transferees in a section 381(a) transaction under Treas. Reg. § 1.884-2T(c)) and Foreign Corps (as the transferors in a section 381(a) transaction under Treas. Reg. § 1.884-2T(c)) satisfy the standards set forth in Treas. Reg. § 301.9100-3(a).

Based on the facts and circumstances of this case, we conclude that the Domestic Subs and Foreign Corps satisfy Treas. Reg. § 301.9100-3(a). Accordingly, the Domestic Subs are granted an extension of time until 45 days from the date of this ruling letter to file their respective Forms 8848 for the Tax Year. The Forms 8848 must be filed by attachment to an amended consolidated federal tax return filed by the Parent for the Tax Year and individually marked "Filed pursuant to section 301.9100-3" at the top. A copy of this letter must also be attached to such amended consolidated federal tax return filed by the Parent. The granting of an extension of time is not a determination that the Foreign Corps are otherwise eligible to determine their respective amounts of U.S. net equity in accordance with the provisions of Treas. Reg. § 1.884-2T(c)(2)(i) for their tax years ending on Date A. Treas. Reg. § 301.9100-1(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Elizabeth K. Karzon  
Chief, Branch 1  
(International)